

**A Kumar a/l Gurusamy v Koperasi Jimat-Cermat dan Pinjaman
Keretapi Bhd**

B COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02-772
OF 2009
ZALEHA ZAHARI, ZAINUN ALI AND ZAHARAH JJCA
18 OCTOBER 2010

C *Administrative Law — Natural justice — Rules of natural justice — Right to be heard — Exclusion of rules of natural justice — Whether rules of natural justice breached upon application of inconsistent by-laws clauses of respondent*

D The appellant was a member of the respondent. The appellant took a loan from the respondent in March 1997. The appellant agreed to pay the loan in 12 several monthly instalments as well as an additional subscription apart from the normal monthly subscription to the respondent. The appellant failed to pay the instalments for two consecutive months. However, by the end of 1997 he paid more than what he was supposed to have paid for the period. The

E appellant continued to exercise his rights as a member of the respondent until he was asked to leave a board of meeting held by the respondent. Subsequently, the appellant was informed that his membership in the respondent had been terminated due to the non-payment of the two monthly instalments. The

F appellant referred the matter to the cooperative tribunal which concluded that removal of the appellant from the membership of the respondent was wrongful as the appellant was not given a right to be heard, thus the respondent was directed to reinstate the appellant effective from the date the appellant paid his outstanding dues to the respondent. Accordingly, the respondent referred the matter to the High Court as provided by s 83(7) of the Co-operative Societies Act 1993 ('the Act') and the learned High Court judge held that once the

G appellant failed to pay his loan instalments to the respondent for two consecutive months, he became disqualified and he could be removed from membership. The learned High Court judge compared the provisions in, cl 20(2) with that of cl 22 of the respondent's by-law ('the by-law') and

H mentioned that cl 20(2) of the by-law was silent with regard to giving an opportunity to the appellant to be heard rather than his automatic removal in comparison to the cl 22 of the by law. The learned judge applying the maxim *expressio unius est exclusion alterius*, that the rules of natural justice had been excluded by the words in the provisions of the respondent's by-laws. All the

I by-law had been adopted by the members of the respondent at a general meeting and was duly registered. Clause 22 of the by-law dealt with a member's misconduct, inter alia: (i) the discretion of the board, which was set-up by the respondent, to suspend a member; (ii) opportunity for the member to be heard before he is suspended; (iii) the suspension reported to the earliest general

meeting and the suspension matter being the first item of the agenda; and (iv) the suspended member given an opportunity to be heard in the general meeting and if two thirds of the delegates present in the general meeting members to vote on the matter. Clause 20(1) of the by-law dealt with death or resignation of a member or member expelled by the decision of the general meeting under cl 22. Clause 20(2) of the by-law dealt the steps to be taken by the board to remove a member from the registry.

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Held, allowing the appeal with costs here and below:

- (1) As cl 20(2) of the by-law requires the board to take the steps of removing the affected member, the board was thus required to determine the existence of the basis of such removal. The provisions of cl 20(2) of the by-law dealt with questions of fact which would require some investigation by the board. It would be quite simplistic to expect the board to possess all the facts. Even in the case of non-payment of dues or instalments of loan repayments, there is every possibility that payments have been sent by the member but not received by the respondents. Pure reliance on the society's records as was done in the appellant's matter was not adequate (see para 14).
- (2) As cl 20 of the by-law does not expressly exclude an opportunity to be heard from being given to a member, the learned High Court judge should have approached the matter to consider whether it would be consistent with the rules of natural justice that a person who may or may not be disqualified is removed from the membership without the member being afforded the opportunity to be heard, cl 20(2), yet a person who is guilty of misconduct and acts in a manner prejudicial to the respondent is provided two opportunities to be heard and can only be expelled by the vote of two thirds of the delegates present at a general meeting, cl 22 of the by-law (see para 15).
- (3) It was incumbent upon the respondent to take all reasonable steps to ensure that the affected member is in fact disqualified before removing him from membership. The board should have brought to the notice of the affected member that it has grounds for believing that the member is qualified under the relevant provision of the by-law, and unless the contrary is shown, he would be removed from membership. That notice would afford the member the opportunity to refute the allegation of the disqualification. However, such notice was not given to the appellant (see paras 17–18).
- (4) Erroneously construing cl 20 of the by-law in providing for the automatic removal of the appellant purportedly for being disqualified without giving him an opportunity to be heard underscore the inconsistency. Hence, in the light of the inconsistency, the maxim *expressio unius est*

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- A *exclusion alterius* should not have been applied to exclude the rules of the natural justice in this case (see paras 37–38 & 42).

[Bahasa Malaysia summary]

- B Perayu merupakan ahli kepada responden. Perayu telah mengambil pinjaman daripada responden dalam bulan Mac 1997. Perayu telah bersetuju untuk membayar pinjaman itu secara 12 ansuran bulanan dan juga sebagai yuran tambahan selain daripada yuran bulanan biasa kepada responden. Perayu telah gagal membayar ansuran untuk dua bulan berturut-turut. Walau bagaimanapun, pada akhir tahun 1997 dia telah membayar lebih daripada apa
- C yang patut dibayarnya untuk tempoh tersebut. Perayu terus menggunakan haknya sebagai ahli kepada responden sehingga dia diminta meninggalkan mesyuarat lembaga yang diadakan oleh responden. Berikutan itu, perayu telah memberitahu bahawa keahliannya dengan responden telah ditamatkan akibat kegagalan membayar ansuran dua bulan tersebut. Perayu telah merujuk
- D perkara tersebut kepada tribunal koperasi yang memutuskan bahawa penyingkiran perayu daripada keahlian responden adalah salah kerana perayu tidak diberikan hak untuk didengar, oleh itu responden telah diarahkan untuk mengembalikan keahlian perayu berkuat kuasa dari tarikh perayu membayar baki hutangnya kepada responden. Oleh demikian, responden telah merujuk
- E perkara tersebut ke Mahkamah Tinggi sepertimana diperuntukkan oleh s 83(7) Akta Koperasi 1993 ('Akta') dan hakim Mahkamah Tinggi yang bijaksana telah memutuskan bahawa jika perayu gagal membayar ansuran pinjamannya kepada responden untuk dua bulan berturut-turut, dia menjadi tidak layak dan boleh disingkirkan daripada keahlian. Hakim Mahkamah
- F Tinggi telah membandingkan peruntukan-peruntukan dalam fasal 20(2) dengan fasal 22 kepada undang-undang kecil responden ('undang-undang kecil tersebut') dan menyatakan bahawa fasal 20(2) kepada undang-undang kecil tersebut tidak menyebut tentang memberikan peluang untuk didengar kepada perayu berbanding dengan penyingkiran automatiknya berbanding
- G dengan fasal 22 kepada undang-undang kecil tersebut. Hakim yang bijaksana telah menggunakan maxim *expesio unius est exclusion alterius*, bahawa rukun keadilan asasi telah dikecualikan oleh perkataan-perkataan dalam peruntukan-peruntukan undang-undang kecil responden. Semua undang-undang kecil telah digunapakai oleh ahli-ahli responden di mesyuarat umum dan telah didaftarkan. Fasal 22 kepada undang-undang kecil tersebut membincangkan salah laku seorang ahli, antara lain: (i) budi bicara lembaga, yang ditubuhkan oleh responden, untuk menggantung seorang ahli itu; (ii) peluang untuk ahli didengar sebelum dia digantung; (iii) penggantungan itu dilaporkan dalam mesyuarat umum paling awal dan hal penggantungan itu dijadikan perkara pertama agenda; (iv) ahli yang digantung diberikan peluang untuk didengar di mesyuarat umum itu dan jika dua pertiga daripada wakil yang hadir dalam mesyuarat umum ahli-ahli boleh mengundi berhubung perkara tersebut. Fasal 20(1) kepada undang-undang kecil tersebut membincangkan kematian atau peletakan jawatan ahli atau ahli yang dipecat
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oleh keputusan mesyuarat umum di bawah fasal 22. Fasal 20(2) kepada undang-undang kecil tersebut membincangkan langkah-langkah yang perlu diambil oleh lembaga untuk menyingkir seseorang ahli daripada pejabat pendaftaran.

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Diputuskan, membenarkan rayuan dengan kos di mahkamah ini dan Mahkamah Tinggi:

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(1) Memandangkan fasal 20(2) kepada undang-undang kecil tersebut menghendaki lembaga mengambil langkah-langkah menyingkir ahli yang terlibat, lembaga dengan itu dikehendaki menentukan wujud asas untuk penyingkiran sedemikian. Peruntukan fasal 20(2) kepada undang-undang kecil tersebut membincangkan persoalan fakta yang memerlukan siasatan oleh lembaga. Terlalu mudah untuk menjangka lembaga memiliki semua fakta tersebut. Bahkan dalam kes kegagalan pembayaran hutang atau ansuran bayaran balik pinjaman, terdapat kebarangkalian bahawa bayaran telah dibuat oleh ahli itu tetapi tidak diterima oleh responden. Kebergantungan semata-mata kepada rekod-rekod kesatuan sepertimana yang berlaku dalam hal perayu tidak memadai (lihat perenggan 14).

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(2) Memandangkan fasal 20 kepada undang-undang kecil tersebut tidak dengan jelas mengecualikan peluang untuk didengar daripada diberikan kepada seorang ahli itu, hakim Mahkamah Tinggi patut mengendalikan perkara tersebut dengan menimbang sama ada ianya konsisten dengan rukun keadilan asasi bahawa seseorang yang mungkin atau tidak mungkin hilang kelayakan disingkir daripada keahlian tanpa ahli itu diberikan peluang untuk didengar, fasal 20(2), namun seseorang yang bersalah terhadap salah laku dan bertindak secara prejudis kepada responden diberikan dua peluang untuk didengar dan hanya boleh disingkir oleh undian dua pertiga wakil yang hadir di mesyuarat umum, fasal 22 kepada undang-undang kecil tersebut (lihat perenggan 15).

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(3) Adalah menjadi kewajipan responden untuk mengambil semua langkah munasabah bagi memastikan bahawa ahli yang terjejas itu sememangnya hilang kelayakan sebelum menyingkirnya daripada keahlian. Lembaga patut membawa kepada perhatian ahli yang terjejas itu bahawa ia mempunyai alasan untuk mempercayai bahawa ahli itu disingkir di bawah peruntukan relevan kepada undang-undang kecil tersebut, dan kecuali yang bertentangan dibuktikan, dia akan disingkir daripada keahlian. Notis tersebut memberikan ahli itu peluang untuk menyangkal pengataatan tentang hilang kelayakan tersebut. Walau bagaimanapun, notis sedemikian tidak diberikan kepada perayu (lihat perenggan 17–18).

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(4) Dengan menyalahafsirkan fasal 20 kepada undang-undang kecil tersebut dengan memperuntukkan penyingkiran automatik perayu oleh

- A kerana dikatakan hilang kelayakan tanpa memberinya peluang untuk didengar menegaskan keadaan yang tidak konsisten. Justeru, berdasarkan keadaan yang tidak konsisten itu, maxim *expressio unius est exclusio alterius* tidak patut digunapakai untuk mengecualikan rukun keadilan asasi dalam kes ini (lihat perenggan 37–38 & 42).]

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Notes

For a case on rules of natural justice, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) para 229.

C **Cases referred to**

Colquhoun v Brooks (1887) 19 QBD 400, DC (refd)

Legislation referred to

Co-operative Societies Act 1993 ss 17, 26, 26(a), (b), (c), 27, 28, 29, 83(7)

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Appeal from: Originating Motion No R3(1)–25–110 of 2004 (High Court, Kuala Lumpur)

N Chandran (Ranjan Chandran with him) (Ranjan Chitravathy & Nik) for the appellant.

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K Shanmuga (Kanesalingam & Co) for the respondent.

Zaharah JCA (delivering judgment of the court):

- F [1] The appellant was a member of the respondent. He took out a loan of RM2,000 in March 1997 from the respondent and for that purpose entered into a bond undertaking to pay the loan in twelve several monthly instalments as well as an additional subscription apart from the normal monthly subscription. He failed to pay the instalments for the months of September and
- G October 1997. However by the end of the 1997 he had paid more than what he was supposed to have paid as at that point of time.

- H [2] In the meanwhile, the appellant continued to exercise his rights as a member of the respondent until he was asked to leave the board meeting on 7 March 1998 and was informed that his membership in the respondent had terminated due to the non-payment of the two monthly instalments.

- I [3] The appellant, being of the view that there was a dispute between him and the respondent, referred the matter to the cooperative tribunal who inquired into the matter and concluded that removal of the appellant from the membership of the respondent was wrongful as the appellant was not given a right to be heard. He was ordered to be reinstated. The tribunal ordered the reinstatement to take effect from the date the appellant paid his outstanding dues to the respondent.

[4] The respondent appealed to the High Court under sub-s 83(7) of the Co-operative Societies Act 1993 ('the Act') against the decision of the tribunal. The High Court allowed the appeal. A

[5] This is the appellant's appeal against that decision of the High Court. B

OPPORTUNITY TO BE HEARD BEFORE REMOVAL UNDER BY-LAW 20(2)

[6] The learned High Court judge held that that once the appellant failed to pay his loan instalments to the respondent for two consecutive months, he became disqualified and he could then be removed from membership. C

[7] The learned High Court judge compared the provisions of cl (2) of by-law 20 of the respondent's by-laws with those of by-law 22 and found that cl (2) of by-law 20 is silent with regard to the giving of an opportunity to be heard whereas such opportunity is provided for in by-law 22. He then concluded, applying the maxim *expressio unius est exclusio alterius*, that the rules of natural justice had been excluded by the words of the by-laws, and that a member who is being removed from membership under cl (2) of by-law 20 has no right to be heard. D
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[8] By-law 20 is as follows:

20(1) Keanggotaan seseorang anggota terhenti atas sebab-sebab di bawah ini, mengikut mana-mana yang berkenaan: F

(a) mati; atau

(b) menarik diri mengikut undang-undang kecil 21; atau

(c) dibuang mengikut undang-undang kecil 22 G

(2) Lembaga hendaklah menyingkir seseorang anggota yang —

(a) didapati membuat ikrar palsu di bawah undang-undang kecil 13; atau

(b) menurut peraturan 11 Peraturan, hilang kelayakan sebagai anggota di bawah undang-undang kecil 19; atau H

(c) terhenti keanggotaannya di bawah perenggan (c) fasal (1) undang-undang kecil ini.

[9] By-law 22 reads as follows: I

22(1) Jika seseorang anggota melanggar mana-mana peruntukan undang-undang kecil ini atau melakukan mana-mana satu daripada perbuatan-perbuatan berikut:

(a) merujukkan pertikaian atau aduan kepada mana-mana orang selain daripada Ketua Pendaftar atau tribunal; atau

- A** (b) membuat kenyataan akhbar atau dalam mana-mana media massa mengenai Koperasi ini tanpa kebenaran Lembaga; atau
- (c) membuat tuduhan palsu ke atas anggota Lembaga atau anggota-anggota atau bekas anggota Koperasi sehingga menyebabkan anggota-anggota berpecah-belah dan berpuak-puak; atau
- B** (d) memburuk-burukkan Koperasi sehingga mencemarkan nama baik dan menjejaskan perniagaan Koperasi ini; atau
- (e) bertindak di luar etika mesyuarat agung sehingga menjejaskan perjalanan mesyuarat itu; atau
- C** (f) tidak dapat dihubungi oleh Lembaga untuk tempoh enam puluh hari dia hendaklah dianggap telah bertindak dengan cara yang memudaratkan kepentingan Koperasi ini dan bolehlah digantung keanggotaannya.
- D** (2) Keputusan untuk menggantung keanggotaan seseorang anggota boleh dibuat oleh Lembaga hanya setelah anggota yang berkenaan diberitahu secara bertulis mengenai kesnya dan diberi peluang untuk menyatakan sebab-sebab mengapa keanggotaannya tidak boleh digantung.
- (3) Tiap-tiap kes penggantungan hendaklah dibentangkan kepada mesyuarat agung perwakilan yang terawal dan dijadikan sebagai agenda pertama, dan anggota yang digantung keanggotaannya itu hendaklah diberitahu secara bertulis tidak kurang daripada lima belas hari sebelum diadakan mesyuarat itu.
- E** (4) Sebelum mengesahkan atau mengetepikan penggantungan itu, mesyuarat agung perwakilan hendaklah mendengar penjelasan anggota yang digantung oleh Lembaga itu, jika dia memilih untuk memberi penjelasan, dan keanggotaannya tidak lucut melainkan jika mesyuarat agung perwakilan dengan undi dua pertiga daripada perwakilan yang hadir membuat keputusan membuangnya.
- F** (5) Sehingga perkara penggantungan keanggotaannya diputuskan oleh mesyuarat agung perwakilan, anggota yang berkenaan itu tidak mempunyai apa-apa hak dan kewajiban sebagai anggota melainkan hak menyuarakan hal penggantungan keanggotaannya itu di dalam mesyuarat agung.
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- H** [10] By-law 22 deals with a member's misconduct. It is a two-stage process. The first stage involves the discretion of the board to suspend him. He must first be given an opportunity to be heard before he is suspended. If he is suspended, his suspension must be reported to the earliest general meeting of delegates and the suspension must be the first item on the agenda. At the meeting he is given another opportunity to be heard. The general meeting then decides whether to set aside his suspension or to expel him from membership.
- I** He can only be expelled if two-thirds of the delegates present at the general meeting vote for the expulsion.

[11] Clause (1) of by-law 20 appears to be intended as a 'housekeeping' mechanism. It provides that a member who dies, or who resigns or who is

expelled by the general meeting under by-law 22 ceases to be a member. In other words, nothing more needs to be done. His name would be taken off the register of members.

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[12] Clause (2) of by-law 20 is worded differently. It requires the board to take the step of removing a member if he falls within any of the three paragraphs of that cl (2). He is to be removed if he has made a false declaration when he applies to become a member, and he is to be removed if he becomes disqualified under by-law 19.

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[13] However, for some inexplicable reason, a person whose membership ceases under para (1)(c) of by-law 20 (by virtue of having been expelled under by-law 22) must also be removed from membership by the board. This is merely one of the many inconsistencies in the respondent's by-laws.

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[14] As cl (2) of by-law 20 requires the board to take the step of removing the affected member, in our view the board is required to determine that the basis for such removal exists. Paragraphs (2)(a) and (b) of by-law 20 deal with questions of fact which would require some investigation by the board. It would be quite simplistic to expect the board to possess all the facts. Even in the case of non-payment of dues or instalments of loan repayments, there is every possibility that payments have been sent by the member but not received by the respondent. Pure reliance on the society's records, as was done in this case, is not adequate.

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[15] As by-law 20 does *not* expressly exclude an opportunity to be heard from being given to a member, the learned High Court judge should have approached the matter by considering whether it would be consistent with the rules of natural justice that a person who may or may not be disqualified is removed from membership without the member being afforded the opportunity to be heard (cl (2) of by-law 20), yet a person who is guilty of misconduct and who acts in a manner prejudicial to the respondent is provided *two* opportunities to be heard, and can only be expelled by the votes of two-thirds of the delegates present at a general meeting (by-law 22).

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[16] It must also be pointed out that under by-law 23 of the respondent's by-laws, a member expelled under by-law 22 will be refunded all his monies in the respondent after deducting amounts owed to the respondent, yet a person who is removed under paras (2)(a) or (b) of by-law 20 has no such right.

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[17] It is therefore incumbent upon the respondent to take all reasonable steps to ensure that the affected member is in fact disqualified before removing him from membership.

- A** [18] At the very least, the board should bring to the notice of the affected member that it has grounds for believing that the member is disqualified under the relevant provision of the by-law, and that unless the contrary is shown, he would be removed from membership. That notice would afford the member the opportunity to refute the allegation of his disqualification. Such notice was
- B** not given to the appellant in this case.

INCONSISTENCIES WITH THE ACT

- C** [19] The provision for the removal of a member under para (b) of cl (2) of by-law 20 is not limited to para (g) of by-law 19. It covers all the instances of disqualification set out in by-law 19.

- D** [20] It was mentioned in the court below that the by-laws had been adopted by the members at the general meeting and had been registered. As such under s 17 of the Act the by-laws bind all members. However, an examination of by-law 19 reveals inconsistencies with the Act and raises some doubts whether the by-law had been made with full understanding of the provisions of the Act.

- E** [21] By-law 19 reads as follows:

Menurut peruntukan seksyen-seksyen 26, 27 dan 29 Akta, seseorang anggota akan hilang kelayakannya sebagai anggota jika dalam masa menjadi anggota dia —

- (a) hilang kewarganegaraan; atau
- F** (b) hilang keupayaan dari segi mental; atau
- (c) diisytiharkan bankrap; atau
- (d) disabitkan atas sesuatu kesalahan boleh daftar;
- G** (e) dibuang daripada keanggotaan mana-mana koperasi dan suatu tempoh selama satu tahun belum lagi berlalu dari tarikh pembuangan itu; atau
- (f) tidak lagi bermastautin atau memiliki tanah atau bekerja dalam kawasan operasi Koperasi; atau
- H** (g) tidak menjelaskan bayaran yuran atau kekurangan atas bayaran kepada yuran atau pinjaman atau sebarang bayaran yang harus dibayar kepada Koperasi bagi tempoh dua bulan berturut-turut; atau
- (h) menerima apa-apa perlantikan tetap yang bergaji dalam Koperasi ini atau koperasi berdaftar yang lain; atau
- I** (i) telah menjadi anggota koperasi berdaftar lain yang tujuan utamanya ialah untuk memberikan pinjaman kepada anggotanya. (Emphasis added.)

[22] The introductory words of by-law 19 indicate that the by-law is made pursuant to ss 26, 27 and 29 of the Act. When those introductory words are

read together with the circumstances of disqualification set out in paras (a) to (i) that follow them, they imply that the circumstances set out in those paragraphs are the very circumstances under which a member becomes disqualified in accordance with the provisions of ss 26, 27 and 29 of the Act. Is that the true position?

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[23] Sections 26, 27 and 29 of the Act are as follows:

Qualification for membership

(26) In order to qualify for membership in a primary society, a person must —

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- (a) be a citizen of Malaysia;
- (b) have attained the age of eighteen years or, in the case of a school cooperative society, have attained the age of twelve years; and
- (c) be resident or be employed or be in ownership of land within the area of operations of the primary society, or, in the case of a school cooperative society, be a registered student of the school.

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Disqualification for membership

(27) No person shall be eligible for admission as a member of a registered society if —

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- (a) he is mentally disabled;
- (b) he is undischarged bankrupt;
- (c) he is a person against whom a conviction stands for a registrable offence;
- (d) he has been expelled from membership under this Act and a period of one year has not elapsed from the date of such expulsion.

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Restriction of membership in society

(29) No person shall be a member of more than one registered society whose primary object is to grant loans to its members.

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[24] The appellant's removal is based upon the respondent's contention that he became disqualified under para 19(g). As mentioned above, by-law 19 purports to derive legitimacy from the three sections of the Act specified therein. However, the circumstances set out in para (g) (and in para (h)) of by-law 19 are not among the grounds for disqualification provided for in any of the three sections.

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[25] A more serious inconsistency is para (f) of by-law 19. That paragraph appears to have been included due to a misinterpretation of s 26 of the Act.

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[26] Under s 26 of the Act, a person qualifies to be member of a primary cooperative society if he fulfils three conditions.

- A [27] The first condition (para (a) of s 26) relates to citizenship. He must be a Malaysian citizen.
- B [28] The second condition relates to age (para (b) of s 26). He must have attained the age of 18 years or, in the case of a school cooperative society, the age of 12 years.
- C [29] The third condition is a condition which makes a cooperative society what it is. That condition relates to the common interest of the members that brings them together into a cooperative relationship in the form of the cooperative society. Paragraph (c) of s 26 sets out four broad areas of common interest. A member must:
- (c) be *resident* or be *employed* or be *in ownership of land* within the area of operations of the primary society, *or*, in the case of a school cooperative society, be a *registered student of the school*. (Emphasis added.)
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- E [30] As can be seen from the highlighted words above, it is sufficient for the condition of a common interest to be met under para (c) of s 26 if *any one* of the situations set out in that paragraph is met. The word ‘or’ in that paragraph (as opposed to the word ‘and’ appearing at the end of para (b)), clearly indicates that the four situations in para (c) are to be read disjunctively.
- F [31] Unfortunately, para (f) of by-law 19 has placed ALL of the areas of common interest set out in para (c) of s 26 (except that of being a registered student) as being conditions which if not met would disqualify members of the respondent.
- G [32] Yet, cl (1) of by-law 10 appears to have captured the intention of para (c) of s 26. It provides that membership of the respondent ‘terbuka kepada semua individu yang sedang bekerja atau telah bersara wajib dari mana-mana organisasi keretapi yang dikendalikan oleh kerajaan, perbadanan, syarikat swasta dan subsidiary-subsidiarinya’. In other words, by virtue of cl (1) of by-law 10, the common interest that brings the members of the respondent together is *employment* with a railway organisation.
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- I [33] That part of para (f) of by-law 19 which disqualifies a member for not being resident or not owning land in the area of operations of the respondent is clearly inconsistent with cl (1) of by-law 10 and inconsistent with para (c) of s 26.
- [34] The tribunal in their award referred to s 28 of the Act and by way of analogy compared the appellant’s position to that of a member who has not paid his dues as a member.

[35] Section 28 of the Act provides as follows:

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28 No member of a registered society shall exercise the rights of a member unless and until he has made such payment to the registered society in respect of membership or acquired such interest in the registered society as may be prescribed by the regulations or by the by-laws of such society.

B

[36] Unlike ss 26 and 27 of the Act which deal with qualification and disqualification for membership, s 28 deals with the exercise by a member of the rights of membership. It should be noted that under s 28 even non-payment of subscription of shares in the co-operative society is not a ground for disqualification, let alone non-payment of a loan taken from the co-operative society.

C

[37] When the appellant obtained the loan from the respondent, he was exercising his right as a member. Paragraph (g) of by-law 19, which renders his non-payment of such loan a ground of disqualification for membership, appears to be inconsistent with s 28.

D

[38] The inconsistencies highlighted above underscore the danger of erroneously construing paras (2)(a) and (b) of by-law 20 as providing for the automatic removal of a member purportedly for being disqualified without giving him an opportunity to be heard.

E

THE APPLICATION OF THE MAXIM EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS

F

[39] In his *Statutory Interpretation, A Code*, (2nd Ed), FAR Bennion, at p 873, had this to say of the maxim *expressio unius est exclusio alterius*:

G

Like all canons of construction the *expressio unius* principle, which Coke gives in the form *designatio unius est exclusio alterius*, operates only where not outweighed by other interpretative factors.

[40] He went on further to state that:

H

Need to apply the *expressio unius* principle is usually a symptom of what in this work is called disorganised composition. Such sloppy drafting calls for special care in applying the principle, since it cannot be assumed that logically-impelled implications were truly intended.

I

[41] The book quoted Lopes LJ in *Colquhoun v Brooks* (1887) 19 QBD 400 at p 406 who said:

A The *exclusio* is often the result of inadvertence or accident and the maxim ought not to be applied where its application, having regard to the subject matter to which it is to be applied, leads to inconsistency or injustice.

B [42] In the light of the inconsistencies which have been highlighted above, the maxim *expressio unius est exclusio alterius* should *not* have been applied to exclude the rules of natural justice in this case.

CONCLUSION

C [43] In the circumstances, we agreed with the decision of the tribunal that the appellant had been wrongly removed from the membership of the respondent. The appeal by the appellant was therefore allowed. The decision of the High Court was set aside and the decision of the tribunal was restored
D subject to the substitution of the word 'dibenarkan' for the words 'layak dipertimbangkan'.

[44] Costs to the appellant was fixed at RM5,000 in respect of this appeal and in the High Court. The deposit to the appellant to account of cost.

E *Appeal allowed with costs here and below.*

Reported by Mashrifah Ravendran

F

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H

I